

Letter to Editor
National Journal - February 14, 2003

As the sponsor of the Feeney Amendment, I would like to take this opportunity to respond to Mr. Taylor's article. The Feeney Amendment has not created new and burdensome requirements for federal judges. On the contrary, it was designed to realign federal sentencing with the Federal Sentencing Guidelines as created by the 1984 Sentencing Reform Act.

The Guidelines, created almost twenty years ago, were purposely written to be mandatory for federal judges when sentencing criminals. Shortly thereafter, the Supreme Court upheld the Guidelines as a proper application of Congress' powers. We as a nation overwhelmingly supported this more restrictive and categorical method for federal sentencing because the "old method" of complete judicial discretion had resulted in a long history of great disparity in sentence lengths for a person committing the same crime in roughly the same circumstances among the different federal judicial districts. Even more repulsive, sentences were wildly disparate among people committing similar crimes but coming from different races and socioeconomic backgrounds. Uniform standards in sentencing were seen as needed reform to ensure that one would receive a just sentence, no matter where he or she lived or what background he or she came from. This reform to the federal sentencing structure was a large bipartisan effort spanning several decades with several prominent federal judges leading the charge. The concept was clear: Justice should be the same for all, regardless of one's race, gender, status, or socioeconomic background.

Unfortunately, over the past five years, there has been a steady rise of cases where federal judges are departing downward from the Guidelines' minimum sentences in certain categories of crimes. Shockingly, one of the areas with the highest departure rate is in crimes of sexual exploitation, especially in cases of child pornography possession. In fact, in a recent 9th Circuit case, a judge stated in her concurring opinion that such downward sentencing departures in child pornography cases have become "so frequent as to indicate a pattern that may merit consideration by the Sentencing Guidelines."

Congress and the Justice Department have been monitoring and conducting hearings on this issue since the Clinton Administration. The Feeney Amendment was added to the PROTECT Act of 2003 in order to address the rising downward departure rate in these types of cases and bring sentencing back to a more uniform pattern in the spirit of the Sentencing Reform Act. Although the Feeney Amendment requires all downward departures from the Guidelines to be reported to the Attorney General, the only instances where a judge may not depart from the Guidelines (except for enumerated exceptions already in the Guidelines) are for these crimes of sexual exploitation.

I wholeheartedly stand by the Feeney Amendment as a necessary piece of legislation to check the rising downward departure rate in these types of cases. The Feeney Amendment will protect children and ensure that those who prey on them will get the sentences they deserve and are required to receive under the Federal Sentencing

Guidelines. Congress intended the Guidelines to be followed by federal judges and Congress should decide whether the Guidelines are too lenient or not.

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Member of Congress